IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No.1017 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

KANTILAL SHIVRAM PATEL

Appearance:

1. Criminal Appeal No. 1017 of 1992

MR BD DESAI APP for Appellant No. 1

MS MEGHA JANI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 16/10/2003

ORAL JUDGEMENT

1. This appeal has been preferred by the original complainant against the judgement and order dated 31-03-1992 passed by the Chief Judicial Magistrate, Palanpur in Criminal Case No.4657 of 1986, acquitting the

original accused, i.e. respondent herein, for the offence under Section 7(1) read with Section 16(1) of The Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act').

2. Mr.B.D.Desai, learned A.P.P. appearing on behalf of the appellant - State and Ms.Megha Jani, learned advocate appearing for the respondent.

3. The prosecution case, in brief, is that the complainant, is the designated Food Inspector, Palanpur at Banaskantha. Respondent No.1 is carrying on business in the name of proprietary concern 'Mangal Dairy Farm'. On 23-10-1985 at around 10:15 a.m., the complainant visited the shop of the respondent where, upon inquiry, it was found that 8 Kg. pure ghee was kept in a tin for sale at Rs.36/- per kg. He purchased 450 grams of pure ghee after making the necessary payment of Rs.16.20 in presence of two panchas, namely, Prahaladbhai Godadbhai and Shamalbhai Hathabhai and informed the accused that the said purchase was made for the purpose of analysis. That the necessary formalities were observed like dividing the purchased ghee into three equal samples and kept in three clean empty dry bottles and thereafter, the bottles were sealed, packed, wrapped and labelled in presence of the panchas. In short, the necessary formalities prescribed under the Act and Rules were duly observed. On 24.10.1985, one sample was forwarded to the Public Analyst, Vadodara for analysis and remaining two bottles were sent to the Local Health Authority, Mahesana. Upon receipt of the report dated 07.11.1985 of the Public Analyst, Vadodara wherein it was stated that the sample of Pure Ghee does not conform to the standards and provisions laid down under the Act and, therefore, the Local Health Authority granted consent in light of the provisions of Section 20 of the Act and accordingly a complaint was filed and prosecution was instituted. The accused respondent denied the charges framed against him and claimed to be tried. Ultimately after taking into consideration the evidence led by the prosecution and the submissions of both the sides the trial Court acquitted the accused holding that the prosecution had failed to prove that the complaint was lodged on the basis of a valid and legal consent as required under Section 20 of the Act. It is against this order of acquittal that the present appeal has been filed.

4. The prosecution examined complainant - Jyotindra Narendraprasad Soni, Food Inspector, Palanpur, Banaskantha as PW 1 at Exh.5; Lalluram Kashinath Patel as

PW 2 at Exh.28; panch Prahaladbhai Godadbhai as PW 3 at Exh.56; panch Shamalbhai Hathabhai as PW 4 at Exh.57. The prosecution has also produced documentary evidence the panchnama at Exh.32; Form - VI duly signed by the panchas, respondent - accused and Food Inspector Exh.30; money receipt for Rs.16.20 duly signed by the respondent - accused in presence of panchas and Food Inspector Exh.31; Notification in respect of the powers to check shops in Gujarat Exh.29, etc.

5. Mr.B.D.Desai, learned A.P.P., submitted that in this case sampling, labelling, sealing was done as per the provisions and Rules as prescribed under the Act and the Rules. Though panchas have not supported the case of the prosecution, this is a fit case wherein this Court has power to rely upon the deposition of the complainant and convict the accused. It is not necessary that in all the cases if the panchas support the case of the prosecution then only the Court has power to convict such accused. On the contrary, this is a fit case wherein such accused who are playing with the life of the citizens with the adulterated eatable articles should be dealt with strictly even though the panchas have not supported the case. The sample sent for examination to the Public Analyst, Vadodara was found adulterated and, therefore, strict view should be adopted by this Court while allowing the appeal of the State and convict the accused and sentence should be awarded to the present accused. In short, the learned A.P.P., has stated that the trial Court has committed a grave error in acquitting the accused.

6. Against the aforesaid submissions, Ms.Megha Jani, learned advocate for the respondent - original accused, submitted that the present complainant and the person who took the sample i.e. Shri Lalluram K Patel are the interested witness and, therefore, in absence of any independent witness coming forth it is required to be assessed very carefully before reversing the judgment and order of the trial Court. She further relied upon certain part of the deposition of PW 2 Lalluram K. Patel, more particularly relying upon para 16 of the prosecution witness she submitted that 3.75 ml. gram was the sample of pure ghee taken by the Food Inspector whereas under Rule 22, requirement of ghee for the quantity of sample to be sent to the Public Analyst is 150 grms. Rule 22 provides for the minimum quantity that is to be sent to the Public Analyst but there is no restriction in obtaining or sending quantity in excess of the minimum prescribed for a particular article of food sent to the Public Analyst for analysis.

7. In light of the aforesaid Rule 22 of the Rules, if we peruse the deposition of witness Lallubhai Patel it is found that in his deposition he said that 3.75 ml. grms. ghee was taken in the glass bottle. Under the circumstances, there is a clear cut violation of Rule 22 and, therefore, the benefit of acquittal should be given to the accused.

8. Ms.Jani further submitted that while taking sample of ghee, the Food Inspector should have churn the article. From the simple deposition of the witness it appears that he has taken sample of ghee without churning the same and, therefore, there is a possibility that if the Food Inspector would have churned the ghee before taking sample, there might not be any turmeric powder on the upper level of the ghee. It was winter time and it is possible that because of the winter season pure ghee might have frozen. She further stated that on account of longer time, this matter deserves no interference with the acquittal order. For that purpose she has relied upon certain authorities (i) Food Inspector, Municipal Corporation Vs. Madanlal Ramlal Sharma & Ors., (1983) 1 SCC 135; (ii) S. Guin & Ors. Vs. Grindlays Bank Ltd., AIR 1986 SC 289; (iii) Vora Mohmadhusen Fidahusen Vs. Doshi Talakchand Durlabhdas & Ors, 1990 (2) G.L.R. 735.

9. In the submissions of Ms.Jani the prosecution must prove that foreign material which was not harmful to health was there on account of a human agency, in view of the fact that pure ghee is a food. For this purpose she has relied upon in the case of KISHORKUMAR VENILAL PATEL Vs. DAYASWARUP BHAILALBHAI RAO & ANR., 1991 (1) G.L.R. 380.

10. Lastly, it was submitted by Ms.Jani, learned advocate for the respondent that there are many lacunae in the judgement and, therefore, this Court should not interfere with the acquittal order.

11. I have pursued the authorities cited by Ms.Jani and have gone through the original papers of the case of the trial Court. I am of the opinion that the benefit should be given to the accused - respondent looking to the many lacunae which are highlighted as under :

(i) The glass bottles which are brought by the Food Inspector was not cleaned on the spot by the Food Inspector himself and it has come on record that on the earlier day bottles were cleaned by his assistant

and the assistant is not examined by the prosecution as witness.

(ii) Moreover, sample as per Rule 22 is required to be taken 150 grams while in the present case it has been taken as 3.5 Ml. Grms. which is below the prescribed limit and, therefore, also the benefit should be given to the accused.

(iii) I have also perused the judgement cited by Ms.Jani on the point of long time lapsed after the acquittal appeal. In the present case, the alleged offence has taken place on 23.10.1985. The present respondent accused is acquitted by the trial Court vide its judgement dated 31.03.1992. Against the said judgement of acquittal, the State Government has filed the present appeal on 03.11.1992. Almost 11 years have passed after filing the present appeal whereas total period of 18 years have passed after the alleged offence. It has come on record that when the offence took place the present respondent was 48 years of age and at present he must be 66 years of age. In case of MUNICIPAL CORPORATION OF DELHI VS. AMICHAND & ANR., 1974 Prevention of Food Adulteration Cases page 64, the Delhi High Court has held that the man was 70 years of age and Court has given him benefit while dismissing the appeal.

In case of STATE OF MAHARASHTRA AND ANR. Vs. GOPALPRASAD GOVINDPRASAD AGARWAL & ORS., JT 1998 (9) SC 115 the bench of the Apex Court held that the appellate Court and the High Court were not justified in concluding that consent was improper. The appeal was dismissed as offence took place 20 years ago.

12. Relying on the deposition of the two panchas who have not supported the prosecution case the learned advocate for the accused - respondent submitted that in clear terms both the panchas have stated that when they were called, the ghee was filled in the bottles, no further procedure was done in their presence and, therefore, also it is very risky to convict the present respondent - accused relying on the deposition of Food Inspector Shri Patel and Mr.Soni who filed the complaint. I am also of the opinion that no reliance can be placed

on such deposition of the panchas who have turned hostile.

13. For the reasons stated hereinabove, the impugned order of acquittal passed by the Court of Chief Judicial Magistrate, Palanpur in Criminal Case No.4657 of 1986 dated 31-03-1992 is hereby confirmed. Hence, the appeal fails and is hereby dismissed.

Sd/-

[SHARAD D. DAVE]

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'Bhavesh'